

## APPENDIX B

3/3/05

### AN ACT TO AMEND THE SENTENCING LAWS

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners was established by the Legislature to examine the factors leading to prison overcrowding, the impact of current sentencing laws, the use of alternate sentences and means to reduce recidivism, in particular that caused by mental illness and substance abuse; and

**Whereas,** the Commission's recommendations to create sentencing alternatives for certain classes of offenses were enacted, however, greater judicial discretion is necessary to deter future criminal conduct or for the safety of a victim of the crime; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health, and safety; now, therefore,

#### **Be it enacted by the People of the State of Maine as follows:**

Sec. 1. 17-A MRSA § 1152, sub-§ 2 is amended to read:

2. Every natural person convicted of a crime shall be sentenced to one of the following:

- A. Unconditional discharge as authorized by chapter 54-D;
- B. A split sentence of imprisonment with probation as authorized by chapter 49;
- C. A fine, suspended in whole or in part, with, at the court's discretion, probation as authorized by chapter 49;
- D. A suspended term of imprisonment with probation as authorized by chapter 49;
- E. A split sentence of imprisonment, the initial unsuspended portion of which is served in whole or in part with intensive supervision, followed by probation as authorized by chapter 52;
- F. A term of imprisonment as authorized by chapter 51;
- G. A fine authorized by chapter 53. Such a fine may be imposed in addition to the sentencing alternatives in paragraph B, D, E, ~~and F~~, H, I, L and M;

- H.** A county jail reimbursement fee as authorized by chapter 54-B;
- I.** A specified number of hours of community service work as authorized by chapter 54-C;
- J.** Deferred disposition as authorized by chapter 54-F;
- K.** A fine, suspended in whole or in part, with, at the court's discretion, administrative release as authorized by chapter 54-G; ~~or~~
- L.** A suspended term of imprisonment with administrative release as authorized by chapter 54-G; or
- M.** A split sentence of imprisonment with administrative release as authorized by chapter 54-G.

Sec. 2. 17-A MRSA § 1172, sub-§ 1 is amended to read:

**1.** When practicable, the attorney for the State shall make a good faith effort to inform each victim of a crime of the following:

- A.** The details of a plea agreement, including a deferred disposition, before it is submitted to the court;
- B.** The right to comment on the plea agreement, including a deferred disposition, pursuant to section 1173;
- B-1.** The proposed dismissal or filing of an indictment, information or complaint pursuant to the Maine Rules of Criminal Procedure, Rule 48, before that action is taken;
- C.** The time and place of the trial;
- D.** The time and place of sentencing; ~~and~~
- E.** The right to participate at sentencing pursuant to section 1174; ; and
- F.** The right to comment on the proposed early termination of probation, early termination of administrative release or conversion of probation to administrative release, pursuant to section 1174-A.

Sec. 3. 17-A MRSA § 1174-A is enacted to read:

§ 1174-A. Termination or conversion procedure

When the attorney for the State receives notice of a motion seeking early termination of probation or early termination of administrative release or seeking to convert probation to administrative release, the attorney for the State shall disclose to the court any and all attempts made to notify each victim of the motion to terminate or convert and any objection to the motion by a victim. If a hearing is held on the motion by the court and the victim is present in court, the victim may address the court at that time.

Sec. 4. 17-A MRSA § 1201, sub-§1, ¶ A-1 is amended to read:

A-1. The conviction is for a Class D or Class E crime other than: ~~any Class D crime committed against a family or household member under Chapter 9 or 13 or section 506 B, 554, 555 or 758; any Class D or Class E crime under chapter 11 or 12; a Class D or Class E crime under section 556, 854, excluding subsection 1, paragraph A; subparagraph (1), or 855; and the Class D or Class E crime under Title 29 A, section 2411, subsection 1-A, paragraph B. As used in this paragraph, “family or household member” has the same meaning as in Title 19 A, section 4002, subsection 4;~~

(1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode, and as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;

(2) A Class D crime committed against a family or household member under chapter 9 or 13 or section 506-B, 554, 555 or 758. As used in this paragraph, “family or household member” has the same meaning as in Title 19-A, section 4002, subsection 4;

(3) A Class D or Class E crime in chapter 11 or 12;

(4) A Class D crime under section 210-A;

(5) A Class D or Class E crime under section 556, 854, excluding subsection 1, paragraph A, subparagraph (1), or 855;

(6) A Class D crime in chapter 45 relating to a schedule W drug;

(7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, paragraph B.

Sec. 5. 17-A MRSA § 1202 (2) is amended to read:

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation or the person’s probation officer, or upon its own motion, the

court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed by the court or a community reparations board, add further requirements authorized by section 1204, or relieve the person on probation of any requirement imposed by the court or a community reparations board that, in its opinion, imposes on the person an unreasonable burden. If the person on probation can not meet a requirement imposed by the court or a community reparations board the person shall bring a motion under this subsection.

Notwithstanding this subsection, the court may grant, ex parte, a motion brought by the probation officer to add further requirements if the requirements are immediately necessary to protect the safety of an individual or the public and if all reasonable efforts have been made to give written or oral notice to the person on probation. Any requirements added pursuant to an ex-parte motion do not take effect until written notice of the requirements, along with written notice of the scheduled date, time and place when the court shall hold a hearing on the added requirements, is given to the person on probation.

Sec. 6. 17-A MRSA § 1202, sub-§ 2-A is amended to read:

2-A. Once the period of probation has commenced, on ~~application~~ motion of the probation officer, or of the person on probation, or on the court's own motion, the court may convert at any time a period of probation for a Class D or Class E crime or a Class C crime under Title 29-A, section 2557 to a period of administrative release. A conversion to administrative release may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. ~~A conversion to administrative release may not be ordered upon the motion of the person on probation unless notice of the motion is given to the probation officer by the person on probation.~~ The provisions of Chapter 54-G apply when probation is converted to administrative release. Conversion to administrative release serves to relieve the person on probation of any obligations imposed by the probation conditions.

Sec. 7. 17-A MRSA § 1202, sub-§ 3 is amended to read:

3. Once the period of probation has commenced on ~~application~~ motion of the probation officer, or of the person on probation, or on its own motion, the court may terminate at any time a period of probation and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. A termination and discharge may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. ~~A termination and discharge may not be ordered upon the motion of the person on probation unless notice of the motion is~~

~~given to the probation officer by the person on probation.~~ Such termination and discharge serves to relieve the person on probation of any obligations imposed by the sentence of probation.

Sec. 8. 17-A MRSA § 1348-A, sub-§ 3 is enacted to read:

3. During the period of deferment, if the person can not meet a deferment requirement imposed by the court, the person shall bring a motion pursuant to subsection 2.

Sec. 9. 17-A MRSA § 1348-B, sub-§ 1 is amended to read:

1. Unless a court hearing is sooner held under subsection 2, at the conclusion of the period of deferment, after notice, a person who was granted deferred disposition pursuant to section 1348-A shall return to court for a hearing on final disposition. If the person demonstrates by a preponderance of the evidence ~~court finds~~ that the person has complied with the court-imposed deferment requirements, the court shall impose a ~~sentence of unconditional discharge under section 1346~~ sentencing alternative authorized for the crime to which the person pled guilty and consented to in writing at the time sentencing was deferred or as amended by agreement of the parties in writing prior to sentencing, unless the attorney for the State, prior to sentence disposition, moves the court to allow the person to withdraw the plea of guilty. Except over the objection of the defendant, the court shall grant the State's motion. Following the granting of the State's motion, the attorney for the State shall dismiss the pending charging instrument with prejudice. If the court finds that the person has inexcusably failed to comply with the court-imposed deferment requirements, the court shall impose a sentencing alternative authorized for the crime to which the person pled guilty.

Sec. 10. 17-A MRSA § 1348-B, sub-§ 2 is amended to read:

2. If during the period of deferment the attorney for the State has probable cause to believe that a person who was granted deferred disposition pursuant to section 1348-A has violated a court-imposed deferment requirement, the attorney for the State may move the court to terminate the remainder of the period of deferment and impose sentence. Following notice and hearing, if the ~~court finds~~ attorney for the State proves by a preponderance of the evidence that the person has inexcusably failed to comply with a court-imposed deferment requirement, the court may continue the running of the period of deferment with the requirements unchanged, modify the requirements, add further requirements or terminate the running of the period of deferment and impose a sentence alternative authorized for the crime to which the person pled guilty. If the court finds that the person has not excusably failed to comply with a court-

imposed deferment requirement, the court may order that the running of the period of deferment continue or, after notice and hearing, take any other action permitted under this chapter.

Sec. 11. 17-A MRSA § 1348-B(5) is amended to read:

5. A summons ~~must~~ may be used to order a person who was granted deferred disposition pursuant to section 1348-A to appear for a hearing under this section. ~~If the person can be located and served with a summons, the attorney for the State may not commence a hearing under this section by having the person arrested, except that a person who fails to appear as required may be arrested pursuant to a bench warrant or an order of arrest. If the person fails to appear after having been served with a summons, the court may issue a warrant for the arrest of the person.~~

Sec. 12. 17-A MRSA §1348-B(6) is repealed.

Sec. 13. 17-A MRSA §1348-B(7) is enacted to read:

If during the period of deferment, the attorney for the State has probable cause to believe that a person who was granted deferred disposition pursuant to section 1348-A has violated a court-imposed deferment requirement, the attorney for the State may apply for a warrant for the arrest of the person.

Sec. 14. 17-A MRSA § 1349 is amended to read:

1349. Eligibility for sentence alternative that includes period of administrative release

A person who has been convicted of a Class D or Class E crime or a Class C crime under Title 29-A, section 2557 may be sentenced to a sentence alternative under section 1152 that includes a period of administrative release, unless:

- A. The statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized therein;
- B. The court sentences the person to a sentencing alternative under section 1152 that includes a period of probation; or
- C. The court finds that such a sentence would diminish the gravity of the crime for which that person was convicted.

Sec. 15. 17-A MRSA § 1349-A, sub-§ 2-A is enacted to read:

2-A. During the period of administrative release, if the person can not meet a requirement of administrative release imposed by the court, the person shall bring a motion pursuant to subsection 2.

Sec. 16. 17-A. MRSA § 1349-B, sub-§1 is amended to read:

1. The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the Class D or Class E crime or the Class C crime under Title 29-A, section 2557, suspend the ~~entire~~ term of imprisonment in whole or in part and accompany the suspension with a period of administrative release not to exceed the one year authorized under section 1349-A, subsection 1.

Sec. 17. 17-A MRSA § 1349-D is amended to read:

1349-D. Commencement of administrative release revocation proceeding.

1. If during the period of administrative release the attorney for the State has probable cause to believe that the person placed on administrative release has violated a requirement of administrative release, the attorney for the State may file a motion with the court seeking to revoke administrative release, ~~and cause a summons to be delivered to the person placed on administrative release ordering that person to appear for a court hearing on the alleged violation.~~ The motion must set forth the facts underlying the alleged violation. ~~The summons must be in the same form as a summons under section 12505-B, subsection 2 except that the summons must include the signature of a law enforcement officer other than a probation officer.~~

1-A. A summons may be used to order a person who was placed on administrative release to appear on a motion to revoke administrative release.

2. A person placed on administrative release appearing on a motion to revoke administrative release pursuant to a summons must be afforded an initial appearance as provided in section 1205-C, subsection 4.

3. If the person placed on administrative release fails to appear in court after having been served with a summons, the court may issue a warrant for the arrest of the person. After arrest of the person, the court shall afford the person ~~a preliminary hearing~~ an initial appearance as provided in section 1205-C, subsection 4, and if retained in custody, section 1205-C, subsection 3 applies.

4. ~~If the person placed on administrative release can be located and served a summons, the attorney for the State may not commence the~~



~~administrative release proceeding by having the person arrested. However, if the person can not, with due diligence, be located, the attorney for the State shall file a written notice of this fact with the court and obtain a warrant of arrest under Rule 41 of the Maine Rules of Criminal Procedure. If during the period of administrative release the attorney for the State has probable cause to believe that the person placed on administrative release has violated a requirement of administrative release, the attorney for the State may apply for a warrant for the arrest of the person.~~ Unless sooner released, the court shall provide the person with an initial appearance on the revocation of administrative release within 14 days after arrest. A copy of the motion must be furnished to the person prior to or at the initial appearance. The initial appearance is as provided in section 1205-C, subsection 4. Bail is as provided in Section 1205-C, subsections 5 and 6.

Sec. 18. 19-A MRSA § 4002 sub-§ 4 is amended to read:

4. **Family or household members.** “Family or household members” means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, natural parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purpose of this chapter and title 17-A sections 1201, 1202, and 1253 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute “living as spouses.” For purposes of this subsection and title 17-A sections 1201, 1202, and 1253, “domestic partners” means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other’s welfare.

Sec. 19. 34-A MRSA § 5402, sub-§ 3, ¶ A-1 is enacted to read:

A-1. Provide for necessary assessment and supervision procedures and direct the use of adult probation resources and staff to the management of adult probationers with a high risk of reoffending;

Sec. 20. 34-A MRSA § 5404, sub-§ 3, ¶ A is amended to read:

A. Supervise the probation, parole, or intensive supervision of each person placed under the officer’s supervision to assure that departmental resources are directed to the management of persons with a high risk of reoffending.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.